82-1030

NO. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1982

GORDON MCLEAN CAMPBELL,

PETITIONER,

V.

WASHINGTON STATE BAR ASSOCIATION,

RESPONDENT.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

Gordon McLean Campbell

Petitioner

1631 Belmont Avenue

Apt. 208

Seattle, Washington 98122

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PETITION FOR A WRIT OF CERTIORARI

The petitioner, Gordon McLean Campbell, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Ninth Circuit entered in this proceeding on October 14, 1982.

QUESTIONS PRESENTED FOR REVIEW

1. Whether the record in this case, when read in the light most favorable to petitioner and all reasonable inferences from the record drawn in petitioner's favor, as required on summary judgment petitioner being the party opposing summary judgment, presents a genuine issue of material fact on the question of whether respondent was involved in a campaign of surveillance and intimidation directed at hindering petitioner's efforts to secure national recognition of the life explanation for the movement of the air, thereby rendering erroneous the judgment of the court below affirming the judgment of the District Court granting respondent's motion for summary judgment and dismissing petitioner's complaint.

2. Whether the record in this case presents a genuine issue of material fact on the question of whether John Kennett, one of

the persons allegedly involved in the tortious conduct directed at petitioner, was alive at the time of the alleged tortious conduct, respondent claiming he was dead at the time of said conduct and supporting this claim with a death certificate for John Kennett showing the date of death as being prior to the time of the alleged tortious conduct, petitioner contending the death certificate is either erroneous or forged since petitioner personally spoke to a man appearing to be John Kennett at least twice three years after the date of his alleged death.

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No opinion of the courts below was reported.

JURISDICTION

The judgment of the United States Court of Appeals for the Ninth Circuit was dated October 14, 1982 and was entered on that date. This Court's jurisdiction is invoked under 28 U. S. C. #1254(1).

CONSTITUTIONAL PROVISIONS AND STATUTES

1st Amendment, United States Constitution

> "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

14th Amendment, United States Constitution.

> "Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the priviledges or immunities of citizens of the United States; nor shall any State deprive

any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

42 U. S. C. #1983
Civil action for deprivation of rights

"Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, priviledges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

STATEMENT OF THE CASE

Petitioner sued in U. S. District Court for damages under 42 U. S. C. #1983 claiming that respondent had interfered with petitioner's exercise of his rights of freedom of religion and free speech under the 1st and 14th Amendments, U. S. Constitution. (See here Dacey v. New York County Lawyers' Association, 423 F. 2nd 188, Second Circuit, (1969), in

which it was held that suit could be maintained against a bar association under 42 U. S. C. #1983 for damages for interference with the plaintiff's right of free speech under the First Amendment.)

Respondent filed a motion to dismiss the action for failing to state a claim upon which relief can be granted, supported by an affidavit and a statement in support of defendant's motion to dismiss.

Petitioner filed a statement in opposition to the motion to dismiss and an affidavit by petitioner, dated August 14, 1980.

On October 17, 1980, the District Court refused to dismiss the complaint. Instead, the court ordered that the motion be treated as one for summary judgment under Rule 56, Federal Rules of Civil Procedure, giving the parties 20 days to file additional materials in support and in opposition to summary judgment.

Petitioner filed a statement in

opposition to summary judgment. Respondent filed a statement in support of summary judgment and two affidavits.

Petitioner then filed a supplemental statement in opposition to summary judgment and an affidavit by petitioner. Respondent filed an addendum to respondent's statement in support of summary judgment, consisting of a death certificate for John Kennett, attorney.

By an order dated December 15, 1980, the District Court granted summary judgment and dismissed petitioner's complaint.

On January 9, 1981, petitioner filed a notice of appeal.

On March 2, 1981, petitioner filed the brief of appellant in the U. S. Court of Appeals for the Ninth Circuit.

On April 1, 1981, respondent filed the brief for appellee with the Court of Appeals.

On April 15, 1981, petitioner filed the reply brief for appellant with the

Court of Appeals.

On April 27, 1981, the record on appeal was transmitted from the District Court to the Court of Appeals.

About June 16, 1981, petitioner filed a motion to advance case to an early hearing date, supported with an affidavit, with the Court of Appeals.

Respondent filed a response to the motion.

On July 13, 1981, the Court of Appeals denied the motion.

On October 13, 1981, petitioner filed a petition for a writ of certiorari before judgment with the Supreme Court of the United States.

On December 7, 1981, the petition was denied.

On October 14, 1982, the Court of Appeals affirmed the judgment of the District Court.

Jurisdiction in the District Court was based upon 28 U. S. C. #1343 and

42 U. S. C. #1983.

This case revolves about petitioner's discovery that the air possibly is alive, an intelligent air form of life, God, capable of oral speech, blowing and moving by means of inherent life and will. The discovery presents an alternative explanation for the movement of the air, life, as distinguished from the commonly given inanimate factors explanation, gravity, rotation of the earth and temperature differences. As an alternative explanation for the movement of the air, supported by the Bible and the fact that science is not certain what causes the air to move, the discovery is potentially highly valuable to petitioner because of its importance in meteorology as well as in other walks of life.

See here Encyclopedia Americana 1979, Meteorology, The General Circulation, p. 721o.

"But we can gain some comfort from our ignorance about the mechanics of the general circulation; when we understand the mechanics better we may find ways....."

Petitioner has for some time been expounding his discovery with the aim of achieving nationwide recognition of the possibility the air is alive. Most Americans are unacquainted with the life explanation for the movement of the air even though it presents the possibility that the air could voluntarily blow airplanes in flight down to earth, voluntarily blow over ships at sea, voluntarily deflect the path of war missiles, voluntarily blow smog from congested areas as well as directly affecting almost every walk of daily life.

Therefore, petitioner believes that it is vitally important to the welfare of the United States that the possibility that the air is alive, intelligent, God, with live movement, be nationally recognized.

In 1966, respondent began a proceeding

to transfer petitioner to the inactive roll of attorneys, based in part upon petitioner's exposition of his discovery. Respondent contended that petitioner's discovery regarding the air was evidence that petitioner was mentally incompetent to practice law.

Petitioner supported his discovery with United States v. Ballard (1944), 322 U. S. 78, 88 L. Ed. 1148, 64 S. Ct. 882 in which it was held that the claim that Jesus Christ came down to earth and spoke to twentieth century humans was a valid religious belief and experience the validity of which governmental authorities were forbidden to inquire into.

Petitioner had learned that the air possibly is alive and God when the voice of God spoke to petitioner in oral English words from out of the adjacent air.

Petitioner also supported his discovery with the Bible, numerous other U. S.

Supreme Court cases involving religious liberty and meteorological data showing that the scientific explanation for the movement of the air is not satisfactory, thereby making plausible the alternative explanation for the the air's movement.

The Washington Supreme Court, in rendering its decision, totally excluded petitioner's discovery about the air from consideration, saying that the discovery was not within the competence of the Hearing Panel or the Washington Supreme Court. In re Campbell, 74 Wn. 2d at 279, 444 P. 2d at 786.

Respondent, in its motion to dismiss in the instant case, denied that it was responsible for the surveillance and intimidation.

The motion to dismiss was treated as one for summary judgment. In its papers in support of summary judgment, respondent again denied that it was responsible for the surveillance and intimidation.

Respondent also attempted to refute petitioner's claim that John Kennett, a leading Seattle attorney, had apparently been employed by respondent to watch and intimidate petitioner, by filing a death certificate for John Kennett, attorney, showing he died in 1964, before the time of the alleged surveillance and intimidation.

Respondent also attempted to refute petitioner's claim that one Phil Wilson, attorney, had taken part in the campaign of surveillance and intimidation by filing an affidavit of one Phillip Bruce Wilson, denying that he had taken part in such a campaign.

Petitioner contended that the death certificate for John Kennett could be erroneous or even a forgery since petitioner had personally spoken with a man, apparently John Kennett, in 1967. Petitioner cited the opinion of Justice Jackson in United States v. Ballard, supra, at 322 U. S. 93, to show that, when an inquiry is made

into the truth of religion (petitioner's discovery regarding the air being God is, of course, such an inquiry), psychological type reactions are likely to occur. Petitioner contended that an erroneous or forged death certificate could well be a manifestation of the profound psychological reaction alluded to by Justice Jackson.

In answer to respondent's affidavit of Phillip Bruce Wilson, petitioner pointed out that the simple answer might well be that two different Phil Wilsons were involved.

> "Summary judgment should be entered only when the pleadings, depositions, affidavits, and admissions filed in the case 'show that (except as to the amount of damages) there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.'....." Poller v. Columbia Broadcasting System, Inc. (1962), 368 U. S. 464, 7 L. Ed. 2nd 458, 82 S. Ct. 486 at 368 U. S. 467.

Thus, pursuant to this rule, presented for the trial court's consideration were the complaint, petitioner's affidavit of

August 14, 1980 and his affidavit of November 10, 1980. Also presented were affidavit of Kurt M. Bulmer of July 25, 1980, affidavit of Kurt M. Bulmer of October 23, 1980 and the affidavit of Phillip Bruce Wilson of November 3, 1980. On these papers, the decision of the trial court must find its basis.

Petitioner contended that his complaint and affidavit of August 14, 1980 presented genuine issues of material fact, precluding summary judgment.

Said complaint and affidavit are set forth immediately following:

Plaintiff's Complaint

Jury Demand

1. The action arises under the Acts of Sept. 9, 1957 and Dec. 29, 1979, 71 Stat. 637 and 93 Stat. 1284; U. S. C., Title 28, #1343 and under the Acts of April 20, 1871 and Dec. 29, 1979, 17 Stat. 13 and 93 Stat. 1284; U. S. C., Title 42, #1983, as hereinafter more fully appears. The

matter in controversy exceeds, exclusive of interest and costs, the sum of ten thousand dollars.

2. During the period from 1969 to present, defendant has conducted a campaign of surveillance and intimidation against plaintiff in the Seattle area, particularly in places of public accommodation, aimed at hindering and impeding plaintiff in his exercise of his rights of freedom of speech and freedom of religion regarding a discovery by plaintiff that the air possibly is alive, an intelligent air form of life, God, blowing and moving by means of inherent life and will.

3. As a result, plaintiff was prevented from obtaining nationwide attention to his discovery about the air even though, if accepted, the discovery would represent one of the largest scientific advances in modern times, with potential profits to plaintiff of at least five million dollars.

Wherefore plaintiff demands judgment against defendant in the sum of five million dollars.

Dated this 11th day of July, 1980.

s/Gordon McLean Campbell
Gordon McLean Campbell

Affidavit of Gordon McLean Campbell

State of Washington)
) ss.
County of King)

Gordon McLean Campbell, being first duly sworn, on oath, deposes and says that he is the plaintiff in the above-entitled action. That the Statement in Support of defendant's motion to dismiss, filed herein, page 4, and the affidavit of Kurt M. Bulmer, filed herein, page 3, state that no surveillance or intimidation of the plaintiff by defendant occurred during the period 1966-1968. That surveillance and intimidation did in fact occur during this period, apparently at the direction of defendant, contrary to the Statement of defendant filed herein.

That during this period 1966-1968, John

Kennett, a leading lawyer in the Seattle area for many years and who, on occasion served as special prosecutor in King County, drove a taxicab about the downtown Seattle streets. That plaintiff, at this same time, had reason to walk around the downtown area and a number of times observed Mr. Kennett driving the cab. That several times, while plaintiff was working in the King County Law Library, Mr. Kennett approached plaintiff speaking in a very loud voice "I am a lawyer, I am a lawyer!", until Mr. Kennett was finally told to be quiet by the law librarian.

Also, while plaintiff was typing some papers in the Law Library typing room, Mr. Kennett took a typewriter immediately adjacent to plaintiff and typed in unison with plaintiff, with the result that plaintiff was forced to type further papers elsewhere.

That Mr. Kennett gave plaintiff a business card carrying the designation

"Mr. Dahlberg, Lawyer, Prefontaine Building, Seattle". When plaintiff explained that he recognized the purported Mr. Dahlberg as being Mr. Kennett, Mr. Kennett half way admitted this was true.

That when plaintiff asked Mr. Kennett if he thought plaintiff's discovery that the air possibly is alive, an intelligent air form of life with live movement, is a potentially important discovery, Mr. Kennett replied "Yes, it is.".

That, on the basis of these facts, plaintiff concluded that the defendant had hired Mr. Kennett to watch and intimidate plaintiff, since defendant was then conducting a proceeding to transfer plaintiff to the inactive roll of attorneys and only defendant and plaintiff knew of the proceeding.

That, during this same period, 1966-1968, one Kathy O'Connor and a male friend moved into plaintiff's residence and lived in an apartment directly across the hall

from plaintiff. That Miss O'Connor and friend sometimes would stand in the hall and silently watch plaintiff when he returned at night. That on one occasion plaintiff observed Miss O'Connor's friend talking near the apartment building with a member of the King County Prosecutor's staff.

That, when the final hearing was held in Olympia before the Washington Supreme Court regarding the transfer of plaintiff to the inactive roll, plaintiff saw Kathy O'Connor's friend in the courtroom crowd.

That during 1969-1970, plaintiff lived at another residence. That, during this period, a woman lived at plaintiff's new residence who worked in an insurance office two doors down the hall from the law firm of McCutcheon, Soderland in the Seattle First National Bank Building. This McCutcheon, Soderland was formerly Kennett, McCutcheon & Soderland of which John Kennett was a leading member. That

this woman would often appear and remain in the lobby of plaintiff's residence when plaintiff was there.

During the period of 1971-1974, plaintiff publicly expounded his discovery that the air possibly is alive about the downtown Seattle area. Plaintiff used signs and oral delivery to do this.

Within four or five days after this public exposition began, he was subjected to surveillance and intimidation. That plaintiff used the downtown Public Library to do research, paperwork etc. connected with the air discovery. Within four or five days after plaintiff began his public exposition (far removed from the Library), a Pinkerton Detective suddenly appeared in the Public Library, regularly patrolling it from top to bottom, carrying a billyclub. This was the first time plaintiff had ever seen a private detective working in the library, although

plaintiff had frequently used the Library since 1957.

That simultaneously with the appearance of the detective, two other new employees appeared in the section where plaintiff worked. The two sometimes conferred with the Detective when plaintiff was present in the Library and often would go by the location downtown where plaintiff publicly expounded the air discovery.

That plaintiff felt that this was an effort to discredit plaintiff with the regular employees of the library as well as with other patrons of the library. That, since this surveillance and intimidation was in similar vein with the previous, plaintiff believed the defendant was the directing hand.

During this period, one man who would frequently stop and watch plaintiff's exposition of the air discovery moved into plaintiff's hotel residence. That said man would often be present in the lobby

of the hotel when plaintiff returned at night. That not long after plaintiff moved into the hotel, the hotel ceased to operate.

That during this period (1971-1974), plaintiff lived at a rooming house on Belmont Street. While plaintiff lived there, several young men moved into the house. They would chant day and night in their rooms, which displeased the landlady. Plaintiff observed mail addressed to one of them in the foyer bearing the name Soriano. That there are several attorneys in Seattle with the name Soriano. That one of the other young men whose first name was Stephen caused the landlady much trouble. On one occasion, his bed was carried out upon the lawn. The landlady finally persuaded him to move when she helped him to find a new room. Later, plaintiff observed this same young man many times about the King County Law Library as well as Seattle. That he appears to be a Seattle attorney.

Plaintiff believes that these facts indicate an effort to discredit and intimidate plaintiff in his residence, thereby hindering his public exposition of the air discovery which was then being conducted downtown. The similarity with previous such occurrences and the fact that attorneys were involved once again linked defendant with the surveillance and intimidation.

Shortly after plaintiff first began his public exposition in 1971, Margaret Sagar (married name unknown), whom plaintiff had last seen in 1941 or 1942, appeared about the downtown Seattle area. That plaintiff would now see Margaret Sagar, an old-time acquaintance of plaintiff, about the downtown coffee shops, the public library, even the laundromat.

During this period, plaintiff used the G. O. Guy drugstore, 3rd and Union, and the Rexall drugstore, 4th and Pine, to take breaks from his public exposition

work. That one Eileen came to work as a waitress at Guy's, having previously worked at the Kennedy Hotel. The Kennedy Hotel is one block from the offices of defendant.

That Eileen's husband had an artifical leg. That he would frequently appear in Guy's and Rexall when plaintiff was there. That he became very friendly with the waitresses. That, during wintery weather when plaintiff for a time ceased his exposition work and was out to the State Employment Office inquiring about employment, Eileen's husband often would be present when plaintiff was there. Margaret Sagar also appeared at the State Employment Office.

That, during this period, one man who would go by plaintiff's public exposition location each day, stopping to ask plaintiff to "invite Jesus into his heart", though he knew plaintiff was expounding a religious type discovery, also moved

into plaintiff's Belmont Street rooming house residence.

That these events appeared to plaintiff to be part of the general scheme of surveillance.

That during this period (1971-1974), where there had been none when plaintiff began his exposition, a flood of pretzel wagons appeared downtown. At one time, almost every downtown street corner (shopping district) was occupied so that it was difficult for plaintiff to find a place to carry on his exposition. When plaintiff ceased his exposition in 1974, most of the pretzel wagons disappeared from the downtown area.

During the period 1975-1977, plaintiff lived at an apartment house. During this period, a man and woman moved into the apartment below plaintiff. They would pound on the plumbing fixtures all night and steadily flush the toilet for hours. After the manager had evicted one noisy

tenant who had been disturbing plaintiff, a fire started across the hall from the manager's apartment and burned out the manager's apartment.

That during this period, a man who had lived down the hall from plaintiff in the Belmont Street rooming house opened a small business one block from plaintiff's new address. He would appear around the area in long flowing robes.

That plaintiff observed one Mr. Gaffney, a Seattle attorney who used to stop and talk to plaintiff when he was publicly expounding the air discovery, in an apartment house two blocks away from plaintiff's apartment house.

That, during this period, while plaintiff was attempting to use the laundromat at Belmont and E. Howell (which he had used for many years), a young lady appeared from across the street brandishing a set of keys and tried to lock plaintiff out of

the laundromat. Though plaintiff managed to complete his wash, the next time he appeared at his regular time, the laundromat was locked and thereafter plaintiff was forced to wash elsewhere. This laundromat is about one block from the Belmont Street rooming house previously referred to.

That, for a time, when plaintiff would leave for work in the morning, plaintiff observed a member of the King County Prosecutor's Office standing at the entrance of an apartment house not far from where plaintiff lived.

That, during this period, Mr. Phil Wilson, attorney and insurance man and close friend of John Harris, former Seattle Corporation Counsel, would be waiting to meet plaintiff near his residence when plaintiff returned home at night. Mr. Wilson, during the time plaintiff was publicly expounding the air discovery, would frequently stop by and talk to plaintiff

about the air discovery.

That during the 1975-1977 period, plaintiff patronized Andy's Restaurant on Broadway. There, the subject of the air discovery was frequently discussed. That several persons, including one Jim Cordova, would regularly be present when plaintiff was there. Plaintiff had patronized Andy's Restaurant since 1961. That plaintiff observed what appeared to be unusual changes of waitresses and one of the waitresses went to work in the Seattle Public Library where the plaintiff worked on the air discovery and did research.

During this period, while plaintiff was signing up a petition regarding guaranteed employment in downtown Seattle, plaintiff sometimes used the Dutch Oven Restaurant, 3rd and Union, for breaks. One man would frequently be there when plaintiff was there, sometimes wearing ornate gowns and discoursing at length

about Bible and other matters. Plaintiff observed him frequently in the area where plaintiff was signing the petition.

Another man, whose mother is a Seattle attorney, also would frequently be in the Dutch Oven Restaurant when plaintiff was there and for a time worked in the cigar store next door to the restaurant. He had also worked in the McGovern-Schriver campaign office in October and November 1972, in front of which office plaintiff was then expounding the air discovery.

During the period of 1978-1980, plaintiff did much work regarding the air discovery in the Seattle Public Library, 4th and Spring Streets. That the patrolling of the library by the private detective continued during this period as it had since 1971. That frequently the escalator in the library would be stopped when plaintiff was there. That, though plaintiff had frequently used the library since 1957, this was the first time plaintiff had ever observed

the escalator stopped.

That during this period a man and his female friend would frequently be in the section where plaintiff worked when plaintiff was there. The woman went to work in an adjacent section for a short while.

During this period, one Charlie Charms would also frequently be present in the section where plaintiff worked, usually talking with the employees of the section.

That one woman, who had gone by plaintiff's public exposition location during the 1971-1974 period, would very often be present in the library when plaintiff was there. She would also often be present when plaintiff patronized the Herfy Restaurant in the University District. It seemed that she knew plaintiff's timetable.

The man who had gone by plaintiff's exposition location in 1972 each day for a time and who had moved into plaintiff's Belmont Street rooming house also was often in Herfy's when plaintiff was there and

sometimes was in the public library when plaintiff was there.

That one of the men who usually were in Andy's Restaurant when plaintiff was there frequently was in the public library when plaintiff was there. He too seemed to know plaintiff's timetable.

Another man, who had gone by plaintiff's public exposition location during the 1971-1974 period, almost invariably would be in Herfy's when plaintiff was there.

During the 1978-1980 period, Margaret Sagar, previously referred to, worked in the Municipal Building, Seattle, where plaintiff often worked on the air discovery.

During the 1978-1980 period, plaintiff changed from Andy's Restaurant to Winchell Donut House on Broadway for breaks. Almost immediately, Jim Cordova, who usually was present in Andy's Restaurant when plaintiff was there, appeared about the Winchell Donut House when plaintiff was there. He talked much with the operators of the donut house.

Within a short time, the management of the Winchell Donut House changed a couple of times.

During the 1978-1980 period, plaintiff patronized the Copper Kitchen Restaurant, Westlake and Olive Streets, Seattle. One of the waitresses who worked at the Copper Kitchen had moved into plaintiff's residence about 1975. The man who was frequently in the Dutch Oven Restaurant when plaintiff was there (sometimes wearing ornate robes, etc.) also appeared in the Copper Kitchen.

The subject of the air discovery was often discussed at the Copper Kitchen. At one time, plaintiff observed attorney Gaffney, previously referred to, working in the kitchen of the Copper Kitchen as a cook. Jim Cordova also appeared in the Copper Kitchen.

Unusual changes in waitress and waiter personnel occurred as well as in the kitchen. At one time, three of the waitresses prod-

uced small pocket Bibles and compared editions although one said that she did not know who the Pope was although the newspapers at the time were filled with stories of the new Catholic Pope taking office.

That the foregoing are some but not all of the acts of surveillance and intimidation which occurred during the period from 1966-1980. That the foregoing acts show a general and common scheme or plan of surveillance and intimidation, relating to plaintiff's discovery that the air possibly is alive, an intelligent air form of life, God, blowing and moving by means of inherent life and will. That the facts indicate that the defendant is responsible for the surveillance and intimidation.

s/Gordon McLean Campbell

Subscribed and sworn to before me this 14th day of August, 1980.

s/Jeanne B. Mortenson

Notary Public in and for

the State of Washington,

Seal residing at Seattle.

The affidavit of Gordon McLean Campbell of November 10, 1980 is set forth in Appendix E, pp. E1, 2.

The affidavits of Kurt M. Bulmer of July 25, 1980 and October 23, 1980 and the affidavit of Phillip Bruce Wilson of November 3, 1980 are set forth in Appendix D, pp. D1-10..

As previously noted, on these six papers (the complaint and five affidavits), the decision of the trial court must find its basis.

Petitioner contends that said papers present a number of genuine issues of material fact, barring summary judgment.

REASONS FOR GRANTING THE WRIT

1. Petitioner contends that the decision of the U. S. District Court herein, granting summary judgment, affirmed by the Court of Appeals, conflicted with the holdings in

Adickes v. Kress & Co. (1970), 398 U. S. 144, 26 L. Ed. 2nd 142, 90 S. Ct. 1598; Poller v. Columbia Broadcasting System, Inc. (1962), 368 U. S. 464, 7 L. Ed. 2nd 458, 82 S. Ct. 486; Scindia Steam Nav. Co., Ltd. v. De Los Santos (1981), 451 U. S. 156, 68 L. Ed. 2nd 1, 101 S. Ct. 1614; and Board Of Education, Island Trees Union Free School District No. 26 et al. v. Pico (1982), 102 S. Ct. 2799.

In Poller v. Columbia Broadcasting System, Inc., supra, at 368 U. S. 467, it was said:

> "Summary judgment should be entered only when the pleadings, depositions, affidavits, and admissions filed in the case 'show that (except as to the amount of damages) there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.' Rule 56 (c), Fed. Rules of Civ. Proc. This rule authorizes summary judgment 'only where the moving party is entitled to judgment as a matter of law, where it is quite clear what the truth is, ...(and where) no genuine issue remains for trial...(for) the purpose of the rule is not to cut litigants off from their right of trial by jury if they really have issues to try.'"

At 368 U. S. 473, the Court continues:

> "We look at the record on summary judgment in the light most favorable to Poller, the party opposing the motion, and conclude here that it should not have been granted..... ..... It is only when the witnesses are present and subject to cross-examination that their credibility and the weight to be given their testimony can be appraised. Trial by affidavit is no substitute for trial by jury which so long has been the hallmark of 'evenhanded justice'."

In Adickes v. Kress & Co., supra, at 398 U. S. 157, the court said:

> "As the moving party, respondent had the burden of showing the absence of a genuine issue as to any material fact, and for these purposes the material it lodged must be viewed in the light most favorable to the opposing party."

At 398 U. S. 158, the Court continues:

> "Because '(o)n summary judgment the inferences to be drawn from the underlying facts contained in (the moving party's) materials must be viewed in the light most favorable to the party opposing the motion,'....."

Scindia Steam Nav. Co., Ltd. v. De Los Santos, supra, is to the same effect. In Scindia, a recent case arising in the the same U. S. District Court from which

the present case arises, it was held that summary judgment had been improperly entered. It was held that a disputed issue of fact did exist which the District Court should not itself have resolved.

See also Board of Education v. Pico, supra, where the Court said:

> "Constuing these claims, affidavit statements, and other evidentiary materials in a manner favorable to respondents, we cannot conclude that petitioners were "entitled to a judgment as a matter of law." .....On that issue, it simply cannot be said that there is no genuine issue as to any material fact." 102 S. Ct. 2812

Here, petitioner contends that the complaint and affidavits present genuine issues of material fact which, as in Scindia, the U. S. District Court, Western District of Washington at Seattle, should not itself have resolved.

2. Petitioner contends that it is a reasonable inference from the facts set forth in petitioner's affidavit of August 14, 1980, which affidavit is uncontradicted

except as to the issues of whether respondent is responsible for the acts set forth therein and as to whether or not John Kennett was alive at the time involved, that the acts of surveillance and intimidation set forth therein were directed at hindering petitioner's exposition of the alternative life explanation for the movement of the air. This is true because the acts were done concurrently with the exposition.

The acts were therefore a violation of petitioner's rights of free speech and freedom of religion.

3. Petitioner contends that it is a reasonable inference from petitioner's affidavit of August 14, 1980 that respondent was involved in the acts of surveillance and intimidation listed in the affidavit.

This is true because the acts first listed in petitioner's affidavit concurred with the commencement of the proceeding by

respondent to transfer petitioner to the inactive roll of attorneys.

The fact that the campaign was initially carried on by a person appearing to be John Kennett, a leading Seattle attorney, and sometime special prosecutor in King County, and carried on in part in the King County Law Library where petitioner was briefing the proceeding against him, indicates that Mr. Kennett was possibly hired by respondent in connection with the proceeding then being conducted against petitioner. (pp. 14-16, supra)

On summary judgment, this reasonable inference regarding the ostensible John Kennett and respondent is required to be drawn in petitioner's favor. Therefore, a genuine issue of material fact on this question is presented.

The actions of Kathy O'Connor and her friend in petitioner's residence and at the final hearing of the proceeding in

Olympis, concurring with the proceeding by respondent against petitioner, indicates that they were possibly used by respondent pursuant to the proceeding. (pp. 16-17, supra)

This reasonable inference is again required to be drawn in petitioner's favor, thereby raising a genuine issue of material fact on this question.

The actions of the lady in petitioner's next residence who worked in an office two doors down the hall from the former law firm of John Kennett, occurring just after the end of the proceeding against petitioner, again indicates that this lady was involved with respondent in connection with the proceeding. (pp. 17-18, supra)

This reasonable inference is required to be drawn in petitioner's favor, creating another genuine issue of material fact.

The acts of surveillance and intimidation, occurring from 1968-1980, set forth in petitioner's affidavit of August 14,

1980 (pp. 17-31, supra), are of a similar nature to those acts occurring during the period 1966-1968 (pp. 14-17, supra), the time during which respondent conducted the proceeding against petitioner.

The acts take place in petitioner's residence as well as in other places of public accomodation, restaurants, libraries and laundromats. Attorneys frequently appear as important actors in the surveillance and intimidation.

In Board of Education v. Pico, supra, a very recent case involving control of library materials, Justice Powell stated at 102 S. Ct. 2823:

> "In different contexts and in different times, the destruction of written materials has been the symbol of despotism and intolerance."

In petitioner's affidavit of August 14, 1980, petitioner testified to numerous acts of surveillance and intimidation in the Seattle Public Library, including the stopping of the escalator when he was

there. (pp. 18, 19, 21, 26, 27, 28, 29, supra)

A reasonable inference from these acts is that they were an attempt to impede petitioner's access to library materials, an attempt to burn the books, so to speak, petitioner needed so much to research his discovery of an alternative life explanation for the movement of the air. (The acts also discredited petitioner with patrons and employees of the library)

A reasonable inference from the acts is that they symbolized the despotism and intolerance to which Justice Powell referred.

A reasonable inference from the acts occurring from 1966-1980 is that they were part of a common scheme or plan aimed at hindering petitioner in his exposition of the alternative life explanation. This inference is required to be drawn in petitioner's favor on summary judgment. Therefore, a genuine issue of material

fact is presented.

Testimony of prior or subsequent transactions, which for some reason are barred from forming the basis for suit, may nevertheless be introduced if it tends reasonably to show purpose and character of particular transactions under scrutiny. United Mine Workers of America v. Pennington (1965), 381 U. S. 657, 14 L. Ed. 2nd 626, 85 S. Ct. 1585.

Petitioner contends that it is a reasonable inference to be drawn from the acts testified to by petitioner occurring during the period 1968-1980 that respondent was involved in these acts of surveillance and intimidation, since said acts are of a similar nature to those occurring during the proceeding, the 1966-1968 period. (During the 1966-1968 period, the acts occurred in petitioner's residence,, the King County Law Library, the downtown streets of Seattle and in the courtroom

of the Washington State Supreme Court; during the 1968-1980 period, the acts occurred in petitioner's residences, the Seattle Public Library, restaurants, laundromats, the downtown streets and the State Employment Office)

As shown earlier, it is a reasonable inference that respondent was involved in the acts of the 1966-1968 period.

When these inferences are drawn in petitioner's favor, as required, a genuine issue of material fact is presented on the question of whether respondent was involved in the acts of surveillance and intimidation during the 1968-1980 period.

Though petitioner did not have first hand knowledge of respondent's involvement, under the holding of Adickes v. Kress & Co., supra, circumstantial evidence of the involvement is sufficient to raise a genuine issue of material fact on the question of involvement, since first hand knowledge of the involvement could only come from adverse

witnesses, the persons actually involved in the acts of surveillance and intimidation.

Therefore, petitioner contends, the record in this case presents a genuine issue of material fact on the question of whether respondent was involved in the acts of surveillance and intimidation occurring during the period from 1966-1980.

4. Petitioner contends that a reasonable inference from the unusual nature of the discovery which petitioner was expounding is that respondent, upon encountering the discovery, experienced a psychological reaction and became involved in a campaign of surveillance and intimidation directed at petitioner's discovery.

In United States v. Ballard, supra, Justice Jackson, in a dissent in which he proposed giving the Ballards more complete relief than they received at that particular time, said:

> "In the second place, any inquiry into intellectual honesty in

> religion raises profound psychological problems. William James, who wrote on these matters as a scientist, reminds us that it is not theology and ceremonies which keep religion going. Its vitality is in the religious experiences of many people. 'If you ask what these experiences are, they are conversations with the unseen, voices and visions, responses to prayer, changes of heart, deliverances from fear, inflowings of help, assurances of support, whenever certain persons set their own internal attitude in certain appropriate ways.'" 322 U. S. at 93.

Here, petitioner's discovery that the air possibly is alive, an intelligent air form of life, God, capable of oral speech and with live movement, involves an inquiry into the truth of religion.

Petitioner contends that it is a reasonable inference from the nature of the discovery petitioner was expounding that psychological reactions might result from the exposition, as suggested by Justice Jackson.

As shown earlier, the alternative

life explanation for the movement of the air develops the further possibility that an intelligent air form of life could, if it chose, voluntarily blow airplanes in flight down to earth, voluntarily blow over ships at sea, voluntarily deflect the path of war missiles and voluntarily blow smog from congested areas. An intelligent air form of life would touch every walk of daily life.

Thus, the idea of voluntary movement of the air might conceivably produce psychological reactions in some people.

Petitioner contends that respondent, faced with the alternative explanation, experienced a profound psychological reaction of the type alluded to by Justice Jackson. The result was the campaign of surveillance and intimidation directed at petitioner's exposition of the discovery.

History, of course, is replete with examples of religious persecutions and religious wars.

On summary judgment, all reasonable inferences from the alternative explanation must be drawn in petitioner's favor, including inferences as to results possibly accruing to our society from acknowledgment of the alternative explanation.

When these inferences are so drawn, petitioner contends, a genuine issue of material fact is presented on the question of whether respondent, upon encountering the life explanation for the movement of the air, experienced a psychological reaction and then engaged in a campaign of surveillance and intimidation of petitioner's exposition of the discovery.

5. Petitioner contends that a reasonable inference from the affidavits herein, when read in the light most favorable to petitioner, is that John Kennett was alive during the period 1966-1968 and a participant in the acts of surveillance and intimidation testified to by petitioner, notwithstanding

respondent has filed a death certificate for John Kennett showing date of death as 1964. Affidavit of Kurt M. Bulmer of October 23, 1980, Appendix D. pp. D7, 8, 10.

Petitioner testified that a man appearing to be John Kennett, a leading lawyer in the Seattle area for many years who on occasion served as special prosecutor in King County, drove a taxicab about the downtown Seattle streets during the period 1966-1968. Petitioner, during this period, had reason to walk around the downtown area and several times observed Mr. Kennett driving the cab. (pp. 14-15, supra)

Several times, while petitioner was working in the King County Law Library, Mr. Kennett approached petitioner speaking in a very loud voice "I am a lawyer, I am a lawyer!" until he was finally told to be quiet by the law librarian. (p. 15, supra)

Petitioner testified that, during this period, while he was typing papers in the Law Library typing rooms, Mr. Kennett took

a typewriter immediately adjacent to petitioner and typed in unison with petitioner with the result that petitioner was forced to type further papers elsewhere. (p. 15, supra)

Petitioner further testified that the ostensible Mr. Kennett gave petitioner a business card carrying the designation "Mr. Dahlberg, Lawyer, Prefontaine Building, Seattle". When petitioner explained that he recognized the man as being John Kennett, the man halfway admitted he was John Kennett. (pp. 15, 16, supra)

Petitioner testified that the man appeared to be John Kennett. A reasonable inference from this testimony, required to be drawn in petitioner's favor on summary judgment, is that the man looked like John Kennett in physical appearance and possessed a voice like that of John Kennett, who was a leading Seattle lawyer.

The man claimed to be a lawyer and John Kennett was a lawyer, another

similarity.

Petitioner contends that a reasonable inference from this testimony is that this man, who looked and talked like John Kennett and who, like John Kennett, purported to be a lawyer, and who then apparently was engaged in surveillance and intimidation of petitioner, was in fact John Kennett since John Kennett sometimes acted as special prosecutor in King County in important cases and petitioner's discovery of an alternative life explanation for the movement of the air was possibly the biggest discovery since Columbus.

On summary judgment, this reasonable inference must be drawn in petitioner's favor. Therefore, petitioner contends, a genuine issue of material fact is presented on the question of whether John Kennett was alive during the period 1966-1968.

CONCLUSION

Because of the foregoing reasons, a

writ of certiorari should issue to review the judgment of the United States Court of Appeals for the Ninth Circuit.

Gordon McLean Campbell

Petitioner